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No. 00-1072

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

LEONARD EDELMAN,

Petitioner,

v.

LYNCHBURG COLLEGE,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF FOR PETITIONER

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QUESTION PRESENTED

Is 29 C.F.R. § 1601.12(b), which provides that a Title VII "charge may be amended to cure technical defects or omissions, including the failure to verify the charge," invalid?

PARTIES

The parties to this proceeding are set forth in the caption.

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OPINIONS BELOW

The October 2, 2000 opinion of the court of appeals, which is reported at 228 F. 3d 503 (4th Cir. 2000), is set out at Joint Appendix ("JA") 32-46. The September 20, 1999 memorandum opinion of the district court, which is reported at 66 F. Supp. 2d 777 (W.D.Va. 1999), is set out at JA 24-31. The September 20, 1999 order of the district court, which is not officially reported, is set out at JA 24-31.

JURISDICTION

The decision of the court of appeals was entered on October 2, 2000. The petition for writ of certiorari was filed on January 2, 2001. This Court granted certiorari on June 25, 2001. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254.

STATUTES AND REGULATION INVOLVED

Section 706(b) of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(b), states in pertinent part, "Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires."

Section 706(e)(1), 42 U.S.C. § 2000e-5(e)(1), provides:

> A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier,

and a copy of such charge shall be filed by the Commission with the State or local agency.

Section 1601.12(b) of 29 C.F.R. provides in pertinent part:

> [A] charge is sufficient when the Commission receives from the person making the charge a written statement sufficiently precise to identify the parties, and to describe generally the action or practices complained of. A charge may be amended to cure technical defects or omissions, including the failure to verify the charge . . . . Such amendments . . . will relate back to the date the charge was first received.

STATEMENT OF THE CASE

Petitioner Leonard Edelman was hired in 1993 as a member of the biology faculty at respondent Lynchburg College. In 1996 he applied for tenure. Despite favorable recommendations from the chair of his department and a faculty committee, on June 6, 1997, the president of the college advised Edelman by letter that tenure had been denied. As a result of that denial of tenure, Edelman's employment by the college subsequently ended.

On November 14, 1997, Edelman faxed to the Richmond office of the EEOC a five page single-spaced letter alleging that the denial of tenure and consequent dismissal were the result of discrimination on the basis of gender, religion and national origin. (JA 47-53). The letter was received by the EEOC 161 days after the alleged discriminatory denial of tenure.[1] The letter asserted that the Dean of the college had been

[1] Under a worksharing agreement then in effect between the EEOC and the Virginia Council on Human Rights, "the EEOC and the [Council] each designate the other as its agent for the purpose of receiving . . . charges. EEOC's receipt of charges on the [Council's] behalf will automatically initiate the proceedings of both EEOC and [the Council] for the purposes of Section 706(c) and (e)(1) of Title VII." (Court of Appeals Appendix, pp. 92-93). This arrangement is discussed in *Puryear v. County of Roanoke*, 214 F. 3d 514, 518-19 (4th Cir.2000). Charges filed with the Council need not be verified (Court of Appeals Appendix, pp. 99-111).

systematically purging white men from the faculty, and concluded:

> I hereby file a charge of employment discrimination against Lynchburg College (Dean Jacqueline Asbury, President Charles Warren and the Board of Trustees) and I call upon the EEOC to investigate this case . . .

(JA 52-53). The letter was not submitted under oath.

On November 26, 1997, Edelman's attorney sent another letter to the EEOC. The letter requested that an agency investigator interview Edelman prior to serving the college. This letter cautioned,

> It is my understanding that delay occasioned by the interview will not compromise the filing date, which will remain as November 14, 1997. Please advise if my understanding in this regard is not correct.

(JA 54-55). EEOC officials never disputed the attorney's understanding that the November 14 letter constituted a Title VII charge.

EEOC did not schedule the requested interview until March 3, 1998. On March 18, 1998, the EEOC mailed to Edelman for his signature under oath an EEOC Form 5, "Charge of Discrimination," which it had prepared based on that interview and on his earlier letter. The accompanying letter from the EEOC characterized Edelman's earlier letter as a "charge of employment discrimination," and set no deadline for the return of the Form 5. Edelman's verified Form 5 was filed with the EEOC on April 15, 1998. After completing its investigation, the EEOC issued Edelman a right-to-sue letter on March 26, 1999.

Edelman initially filed this action in state court, alleging a violation of Title VII and of several state statutes. Lynchburg college removed the action to federal court. The College then moved to dismiss the Title VII claim on the ground that Edelman had failed to file a timely charge of discrimination.

Under the terms of Title VII, Edelman was obligated to file such a charge within 300 days of the June 6, 1997 letter notifying him of the denial of tenure. Edelman's November 14,

1997 letter fell well within the limitations period, but the verified Form 5 was not received by EEOC until 313 days after June 6, 1997. (JA 62-63). Officials at the EEOC's Richmond office submitted declarations stating that the substantive allegations of the November 14, 1997 letter were sufficiently detailed to constitute a charge, and that the EEOC had regarded the verified Form 5 as relating back to the earlier letter.[2]

The district court dismissed Edelman's Title VII claims on the ground that he had not filed a timely Title VII charge, and remanded his remaining state law claims to state court. (JA 24-31). On appeal, the Fourth Circuit concluded that the controlling problem was that the November 14 "letter was not sworn to under oath or affirmation." (JA 35). Section 706(b) states that a charge "shall be under oath or affirmation." Edelman relied on an EEOC regulation which permits such a lack of verification to be corrected by a later sworn statement. "A charge may be amended to cure technical defects or omissions, including the failure to verify the charge . . . . Such amendments . . . will relate back to the date the charge was first received." 28 C.F.R. § 1601.12(b).

The appeal thus turned on a dispute regarding the validity of the EEOC regulation. A majority of the court of appeals concluded that the regulation was invalid, insisting that the language of Title VII unambiguously required that the EEOC receive a sworn charge within the 300 day limitation period. (JA 32-33, 36-40). The majority also rejected Edelman's argument that his reliance on the disputed regulation warranted equitable tolling. (JA 43). In a concurring opinion, Judge Luttig argued that the regulation was valid, but would on other grounds have affirmed the dismissal of the Title VII claims. (JA 45-46).

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[2] JA 78-82.

SUMMARY OF ARGUMENT

Section 713(a) authorizes the EEOC to issue "procedural regulations to carry out the provisions" of Title VII. Like Rule 15 of the Federal Rules of Civil Procedure, which authorizes and provides for the relation back of amendments, § 1601.12(b) deals with procedure because it regulates the "process for enforcing rights and duties recognized by substantive law." *Sibbach v. Wilson & Co.*, 312 U.S. 1, 14 (1941).

Section 1601.12(b) provides that an otherwise sufficient Title VII charge may be verified after the end of the charge-filing period. Under *Chevron, U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837 (1984), § 1601.12(b) must be upheld unless either the text of Title VII forbids relation back of verification or the regulation itself constitutes an unreasonable interpretation of the law.

Section 706(e)(1), which establishes a deadline for the filing of a charge, makes no mention of verification. Section 706(b), which requires verification, sets no deadline by which that is to occur. A literal reading of these two provisions indicates that only filing, but not verification, is subject to the § 706(e)(1) deadline.

The court below erred in concluding that Title VII *defines* "charge" to mean an allegation under oath or affirmation. Section 706(b) is a requirement, not a definition. It provides that "charges shall be . . . under oath or affirmation," not that "charges are allegations under oath or affirmation." A charge that is not yet under oath or affirmation is an unverified charge, not an "uncharge."

Section 1601.12(b) is consistent with the pre-1964 liberal treatment of amendments to charges under the National Labor Relations Act. Although the NLRB required that unfair labor practice charges be verified, the lack of such verification did not invalidate an otherwise sufficient charge. *Union Starch & Refining Co. v. National Labor Rel. Bd.*, 186 F. 2d 1008, 1013 (7th Cir. 1951).

This Court has long refused to read into the charge-filing provisions of Title VII any procedural requirements not "compelled by the plain meaning of the statutory language." *Mohasco Corp. v. Silver*, 447 U.S. 807, 816 (1980). "Such

technicalities are particularly inappropriate in a statutory scheme in which laymen, unassisted by trained lawyers, initiate the process." *Love v. Pullman Co.*, 404 U.S. 522, 526-27 (1972).

Section 1601.12(b) is a reasonable solution to a serious practical problem in the administration of Title VII. Most aggrieved individuals do not know of the § 706(b) verification requirement when they first contact the EEOC. Often, as occurred in both *Love* and *Mohasco*, complainants initially contact the EEOC by letter. Because of the shortness of the charge filing periods, it is often impracticable for the EEOC to arrange for verification before the end of the period; equally importantly, a precipitous effort to obtain immediate verification would interfere with the EEOC's responsibility to assure that a charge is complete and accurate.

Where litigants are required under federal or state law to verify their pleadings, they have long been permitted to amend those pleadings at a later time to supply or correct that verification. "Even if the statute requires verification, the filing of an unverified complaint will commence the action so as to toll the statute of limitations." 1A Barron and Holtzoff, Federal Practice and Procedure, § 333 pp. 271 (1960). Federal litigants are generally permitted to correct errors of this sort. *Becker v. Montgomery*, 121 S.Ct. 1801 (2001). In adopting § 1601.12(b), the EEOC reasonably concluded that a Title VII charge should not be subject to more stringent procedural requirements than would apply to formal pleadings.

ARGUMENT

I. THE RELATION-BACK RULE IN § 1601.12(b) MUST BE UPHELD UNLESS TITLE VII UNAMBIGUOUSLY REQUIRES THAT A CHARGE BE VERIFIED WITHIN THE CHARGE FILING PERIOD

This case involves the exercise by the EEOC of the rulemaking authority expressly established by § 713 of Title VII. Section 713(a) provides that "The Commission shall have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of this subchapter." 42 U.S.C. § 2003-12(a). The EEOC lacks the

authority to issue binding rules and regulations regarding the substantive commands of Title VII. *EEOC v. Arabian American Oil Co.*, 499 U.S. 244, 257 (1991). But, as the Court recognized in *General Electric v. Gilbert*, 429 U.S. 125, 141 n. 20 (1976), Congress did choose to confer such power on the Commission with regard to procedural matters.

The relation-back provision of § 1601.12(b) is undeniably procedural in nature, and thus within the scope of § 713(a). It regulates the "process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for disregard or infraction of them." *Sibbach v. Wilson & Co.*, 312 U.S. 1, 14 (1941). Section 713(a) is similar to the Rules Enabling Act, which authorizes this Court to prescribe "general rules of practice and procedure," but not rules which would "abridge, enlarge or modify any substantive right." 28 U.S.C. § 2072. The Rules Enabling Act has long and properly been understood to authorize Rule 15 of the Federal Rules of Civil Procedure, which permits amendments to pleadings and governs when those amendments will relate back to the date on which the relevant pleading was originally filed. See *Foman v. Davis*, 371 U.S. 178, 181 (1963). Section 1601.12(b) is an analogous procedural regulation of administrative proceedings before the EEOC.

Because this case involves an exercise of the Commission's rulemaking authority, it is governed by *Chevron, U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837 (1984). Under *Chevron* the validity of a regulation turns on a two step analysis. First, the Court must determine

> whether Congress has spoken directly to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.

467 U.S. at 842-43. In the absence of such a clear intent, however, an agency's interpretation must be upheld so long as it is "a reasonable one." 467 U.S. at 845.

Section 713(a) specifically provides that the EEOC must comply with the requirements of the Administrative Procedure

Act when it issues procedural regulations. "Regulations issued under this section shall be in conformity with the standards and limitations of subchapter II of chapter 5 of Title 5." 42 U.S.C. § 2000e-12(a).[3]

> It is fair to assume generally that Congress contemplates administrative action with the effect of law when it provides for a relatively formal administrative procedure tending to foster the fairness and deliberation that should underlie a pronouncement of such force.

United States v. Mead Corp., 121 S.Ct. 2164, 2172 (2001).

Two additional circumstances make application of *Chevron* deference particularly appropriate in this case. First, § 1601.12(b) was originally promulgated by the EEOC in July 1966, only a year after the effective date of Title VII and the creation of the EEOC.[4] Such contemporaneous regulations have always been accorded particular weight, in part because the drafters are assumed to have an understanding of the underlying congressional purposes. EEOC's "contemporaneous construction" of Title VII "deserves special deference when it has remained consistent over a long period of time." *EEOC v. Associated Dry Goods Corp.*, 449 U.S. 590, 600 n. 17 (1981).

Second, in 1972 Congress both rewrote the verification requirement now contained in § 706(b), and amended the charge filing deadline in § 706(e). By 1972 the predecessor of § 1601.12(b) had been in existence for six years; during the Senate debates the text of the EEOC procedural regulations, including the predecessor of § 1601.12(b), was placed in the Congressional Record. 118 Cong. Rec. 717-18 (1972). The lower courts prior to the 1972 legislation had repeatedly upheld

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[3] The referenced subchapter of Title 5, 5 U.S.C. § 551-59, is the Administrative Procedure Act.

[4] 31 Fed. Reg. 10269 (1966). Prior to 1977 this regulation was codified in 29 C.F.R. § 1601.11(b)(1975).

The EEOC explained at the time that it had promulgated § 1601.11(b) "to describe more clearly the present Commission policy with respect to the filing and amendment of charges." 31 Fed. Reg. 10269.

and applied the predecessor of § 1601.12(b).[5] And this Court, in *Love v. Pullman Co.*, 404 U.S. 522, 524 (1972), had noted that the EEOC in 1966 had "treated [a] letter as a complaint" "[i]n accordance with its usual practice."[6] Congress can be presumed to have approved this longstanding interpretation of Title VII when it extensively rewrote the applicable provisions of § 706 without attempting to overturn that regulation. Congress's failure to disapprove the Commission's longstanding regulation "suggests its consent to the Commission's practice." *Associated Dry Goods*, 449 U.S. at 600 n. 17.

II. THE TERMS OF TITLE VII DO NOT REQUIRE VERIFICATION OF A CHARGE WITHIN THE CHARGE FILING PERIOD

This case concerns the interrelationship between § 706(b) and § 706(e)(1) of Title VII. Section 703(e)(1) provides that "[a] charge under this section shall be filed within" a specified period of time; for most plaintiffs today the charge filing period

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[5] *Blue Bell Boots, Inc. v. EEOC*, 418 F. 2d 355, 357 (6th Cir. 1969)(citing cases); *Georgia Power Co. v. EEOC*, 412 F. 2d 462, 466 (5th Cir. 1969)(noting that earlier Fifth Circuit decisions had "approved the EEOC's regulation"); *Weeks v. Southern Bell Tel. & Tel. Co.*, 408 F. 2d 228, 230-31 (5th Cir. 1969)(affirming district court decision which "sustained the validity of" the predecessor of § 1601.12(b)); *Choate v. Caterpillar Tractor Co.*, 402 F. 2d 357, 359-60 (7th Cir. 1968); *Washington v. T.G. & Y. Stores, Co.*, 324 F. Supp. 849, 853 (W.D.La. 1971); *Moss v. The Lane Co.*, 50 F.R.D. 122, 126-27 (W.D.Va. 1970); *Wilson v. Monsanto Co.*, 315 F. Supp. 977, 978 (E.D.La. 1970); *Bremer v. St. Louis Southwestern R. Co.*, 310 F. Supp. 1333, 1339 (E.D.Mo. 1969); *Marquez v. Ford Division of Ford Motor Co.*, 1968 WL 162 *2 (D.Neb.); *see Sanchez v. Standard Brands, Inc.*, 431 F. 2d 455, 461-62 (5th Cir. 1970).

[6] *Love* cited the portion of the predecessor of § 1601.12(b) which provides that a charge is sufficient if it identifies the parties and "describe[s] generally" the practices complained of. 404 U.S. at 524 n. 2. It appears that the letter in this case was actually filed by the EEOC prior to the promulgation of that regulation. The relevant state officials on June 1, 1966, waived their opportunity to investigate the charges in the letter. The regulation itself was promulgated on July 29, 1966. The Commission explained at the time that the 1966 regulation described already then existing EEOC practice. 31 Fed. Reg. 10269.

is 300 days.[7] Section 706(b) states in part that "[c]harges shall be in writing under oath or affirmation." The question here is whether the § 706(e)(1) deadline for filing is also a deadline for the § 706(b) verification.

Section 706(e)(1) establishes a deadline for filing, but makes no mention of verification. Section 706(b), on the other hand, which does require verification, sets no deadline by which that is to occur. The literal reading of these two provisions indicates that only filing, but not verification, is subject to the § 706(e)(1) deadline.

The meaning of the § 706(e)(1) filing deadline is particularly clear in the original version of Title VII adopted in 1964. In 1964, as now, § 706(e) required that "a charge . . . be filed" within a specified (then shorter) period of time. The verification requirement, however, was originally embodied in then § 706(a), which required the EEOC to conduct an investigation "[w]henever it is charged in writing under oath", that an unlawful employment practice had occurred. 78 Stat. 259. The EEOC's § 706(a) duty to investigate was triggered by a "charg[e] in writing under oath", but the § 706(e) filing deadline required only the filing of a "charge." The decision of the Fourth Circuit would, in effect, read into § 706(e) after the word "charge" the additional limitation "in writing under oath," a phrase Congress itself deliberately chose to use only in § 706(a). The action of Congress in 1972 rewording the verification requirement and moving it to § 706(b) did nothing to alter the meaning of *what* has to be filed under § 706(e).

If, as the Fourth Circuit believed, an allegation of discrimination is not a "charge" until and unless verified, a simple letter charging an employer with discrimination–one of the most common types of complaint the EEOC receives–would not be covered by the confidentiality provision of Title VII. Section 706(b) protects employers by directing that "[c]harges shall not be made public by the Commission." 42 U.S.C. § 2000e-5(b). If an unverified allegation of discrimination is not a "charge," the EEOC could release to the

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[7] The 300 day limit applies in states or localities which have appropriate agencies with authority to enforce employment discrimination laws or ordinances. *See* § 706(c).

press or post on its website every such letter it received and every unsworn Intake Questionnaire it prepared. Similarly, if § 706(b) were indeed definitional, then individuals who send unsworn letters of complaint to the EEOC would in some cases fall outside the protections of the anti-retaliation provision of § 704, which forbids reprisals against an individual because he or she "has made a charge . . . under this subchapter." 42 U.S.C. § 2000e-3(a).

The error underlying the decision below is highlighted by its insistence that even a written and verified allegation of discrimination "is not a charge" if it lacks any of the information required by the EEOC. (JA 37). The EEOC regulations provide that a charge "should" include considerable information, such as the full name and address of the alleged perpetrator, a list of the "pertinent dates," the approximate number of employees of the employer, and the date on which any charges were filed with a state or local enforcement agency. 29 C.F.R. § 1601.12(a). Many of the complaints received by the EEOC undoubtedly lack at least some of these details. It is not to be believed that Congress contemplated that a sworn allegation of discrimination would for want of some such detail "not [be] a charge" and thus not be sufficient to satisfy the charge filing deadline of § 706(e)(1). Yet it is difficult to separate the information requirement in § 706(b) from the verification requirement in the very same sentence.

Requiring that a charge be verified within the § 706(e)(1) deadline would establish for individuals seeking assistance from the EEOC a barrier which Congress clearly believed unduly burdensome. Where state or local law forbids discrimination also prohibited by Title VII, § 706(c) generally provides that an aggrieved individual cannot file a charge with the EEOC until at least sixty days "after proceedings have been *commenced* under the State or local law." 42 U.S.C. § 2000e-5(c)(emphasis added). Section 706(c) further states, however, that the state or local proceedings will be deemed to have been commenced by the filing of an unsworn written allegation, regardless of whether the terms of the applicable state or local law may itself require verification.

> If any requirement for the commencement of such proceedings is imposed by a State or local authority

> other than a requirement of the filing of a written and signed statement of the facts upon which the proceedings is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

It is difficult to believe that Congress intended to impose on individuals seeking to commence a federal administrative proceeding a requirement more onerous than Congress believed was reasonable for states and localities to require in order to commence a proceedings under state or local laws.

The court of appeals mistakenly believed that § 706(b) constitutes a *definition* of the "charge" that must be filed within the time period established by § 706(e)(1).

> [I]f a discrimination claim is not in writing, under oath or affirmation, containing the information and in the form required by the Commission, *it is not a charge*.

(JA 37)(emphasis added).[8] Section 706(b) does not define the meaning of a charge; rather, it imposes requirements on allegations which *are* charges. Section 706(b) provides that "charges shall be . . . under oath or affirmation," not that "charges *are* allegations under oath or affirmation."[9] If "charge" *meant* "allegation under oath or affirmation," then the terms of § 706(b) would provide that "an allegation under oath or affirmation shall be under oath or affirmation." A charge that is not yet under oath or affirmation is an unverified charge, not an "uncharge." A requirement that members of the armed

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[8] See JA 37: "In *defining* a charge, Congress chose to limit the EEOC's authority." (emphasis added).

[9] During the 1972 debates, Senator Allen proposed an amendment, drafted by Senator Ervin, that would have defined "charge" in this manner. Senator Allen's proposal would have inserted in Title VII the following language: "As used in this act, 'charge' shall mean an accusation of discrimination supported by oath or affirmation." 118 Cong. Rec. 4815 (1972). At the urging of Senator Williams, Allen agreed to replace that proposal with the language now found in § 706(b). *Id.*

forces wear uniforms does not mean that a soldier out of uniform is a civilian.

Title VII does indeed establish a standard regarding what must be filed within the charge filing period, but that requirement is to be found in § 706(e)(1), not § 706(b). Section 706(e)(1) requires the filing within the requisite time period of "a charge . . . alleging that an employer [or other entity] . . . has engaged in an unlawful employment practice." An allegation that an employer violated Title VII will suffice, however unartful that claim might be.[10] But an elegantly written, thoroughly detailed and fully verified allegation that Lynchburg College has a mediocre football team would not satisfy the charge filing deadline in § 706(e)(1) because it is not a charge of an unlawful employment practice.

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[10] The letter the EEOC treated as a charge in *Love v. Pullman Co.*, 404 U.S. 522 (1972), read as follows:

> This is a letter of inquiry to determine whether the circumstances I feel unfair and discriminatory are of such a nature as to come under your area of inquiry. I have taken the matter up with the state Civil Rights Commission locally and find that my objective was not understood. I am enclosing their letter of reply. According to it, they evidently believed I was endeavoring to become a Pullman Conductor. That is not the case.
>
> I have been a sleeping-car porter for 40 years, and an 'in-charge' porter for 20 of those years. My complaint is simply this: That when I am on duty as an 'in-charge' porter I have all the duties and responsibilities of a Pullman conductor, and receive only porter pay.
>
> I maintain that this is discrimination because of race and I believe that it is a matter which comes under the jurisdiction of your office. If there is further information which you require I will be pleased to give it to you.

Brief for Petitioner, No. 70-5033, Appendix B.

III. SECTION 1601.12(b) IS A REASONABLE INTERPRETATION OF § 706

A. Section 1601.12(b) is Consistent with the Liberal Treatment of Amended Charges and Complaints Under the National Labor Relations Act.

As this Court has often noted, Title VII was originally modeled after the National Labor Relations Act. *Teamsters v. United States*, 431 U.S. 324, 366 (1977). This Court has looked to practice and remedies under the NLRA in construing Title VII itself. *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 395 n. 11 (1982).

The NLRA requires that an unfair labor practice charge be filed within six months of the alleged violation. 29 U.S.C. § 160(b). Although the NLRA does not itself require that an unfair labor practice charge be made under oath, the National Labor Relations Board issued a regulation imposing such an obligation. 29 C.F.R. § 102.11. In *Union Starch & Refining Co. v. National Labor Rel. Bd.*, 186 F. 2d 1008 (7th Cir. 1951), both the company and the union objected that the employee who had filed the charge in question had not adequately sworn to the truth of his allegations.[11] The court concluded that the absence of the oath required by the Board's rules would not by itself invalidate the charge.

> The Board decided that [the employee's] references to the Bible upon signing the amended charges . . . were equivalent to an oath. We do not understand the Company or the Union was in any way misled or prejudiced by this procedure. . . . [E]ven if the Board erroneously construed its rules, the error was harmless. It did not affect the substantial rights of the Company or the Union, and should therefore be disregarded.

186 F. 2d at 1013.

[11] The charging party explained that it was against his religious beliefs to swear, but he "solemnized his signature with the Biblical reference to St. Matthew, Chapter 5, verses 34, 35, 36, and 37." 186 F. 2d at 1013.

More broadly, prior to 1964 parties who had filed unfair labor practice charges under the NLRA were regularly permitted to amend those charges to advance alternative legal claims or to name additional victims of the practice in question.[12] The courts expressly permitted such amendments to be filed after the expiration of the six month period.

> Anyone can file a charge. Many are filed by private citizens unskilled in the law or art of pleading. To require the strictness of formal pleadings in such cases would seriously impair the salutary purpose of the Act and the operations of the Board . . . . [A]n amended charge will be timely although filed more than six months after the occurrence of the alleged unfair labor practice if it relates to an unfair labor practice inherent in or connected with the original charge. In such cases, it will *relate back* to the filing of the original charge. The doctrine of relation back in pleading is well recognized in the general law. It should not be narrowly applied in a remedial act such as the one before us . . . .

Kansas Milling Co. v. NLRB, 185 F. 2d 413, 415 (10th Cir. 1950)(emphasis added)(footnote omitted).

In *Radio Officers' Union v. NLRB*, 347 U.S. 17 (1954), the original charge had alleged that the employer had violated §§ 8(a)(1) and 8(a)(3) of the NLRA by denying to a single non-union member certain payments that had been made to union members. More than a year after the filing of that charge, it was amended to include the additional allegation that a union security clause violated §§ 8(a)(1) and 8(a)(2). The complaint then issued by the General Counsel of the NLRB contained yet another a new allegation, that the payments in question had

[12] *E.g.*, *NLRB v. Millwrights' Local 2232*, 277 F. 2d 217, 219 (5th Cir. 1960); *NLRB v. United Brotherhood of Carpenters & Joiners*, 276 F. 2d 694, 696 (7th Cir. 1960); *Cosentino v. Local 28, Int'l Org. of Masters, etc.*, 258 F. 2d 648, 650 (8th Cir. 1959); *Pacemaker Corp. v. NLRB*, 260 F. 2d 880, 882 (7th Cir. 1958); *NLRB v. Raymond Pearson, Inc.*, 243 F. 2d 456, 457 (5th Cir. 1957); *Douds v. International Longshoremen's Ass'n*, 242 F. 2d 808, 809 (2d Cir. 1957).

been unlawfully denied to all nonunion members. This Court rejected the employer's contentions that

> inclusion of such employees who did not file charges is prohibited by the six-month statute of limitations period provided in § 10(b) of the Act. We agree with . . . the Board, and the court below that this charge *relates back* to the charges timely filed and thus the company was given adequate notice and was not prejudiced by the amendment.

347 U.S. at 34 n. 30 (emphasis added).

The courts repeatedly refused to restrict proceedings under the NLRA to the confines of the original charge.

> A charge filed with the Labor Board is not to be measured by the standards applicable to a pleading in a private lawsuit. Its purpose is merely to set in motion the machinery of an inquiry. . . . The responsibility of making that inquiry, and of framing the issues in the case is one that Congress has imposed upon the Board, not the charging party.

Labor Board v. Fant Milling, 360 U.S. 301, 307 (1959). Thus the Board itself was permitted to include in a complaint any violations that were unearthed in its investigation of the charge, even if not included in the original charge itself. "The purpose of the charges is not to define the issues to be tried with the precision that is sought normally in pleadings in law suits. . . . [I]t would hardly be consistent with the general investigatory nature of the action on the charge to confine the subsequent complaint to its allegations." *NLRB v. Kingston Cake Co.*, 191 F. 2d 563, 567 (3d Cir. 1951).[13]

The NLRB's regulations, like § 1601.12(a), required that a charge contain certain specified information. *Compare* 29 C.F.R. § 102.12 (NLRA) *with* 29 C.F.R. § 1601.12(a)(Title VII). The federal courts emphatically rejected contentions–accepted by the court of appeals below regarding a Title VII charge–that a charge under the NLRA was insufficient to confer jurisdiction on the NLRB if it lacked that required

[13] *See NLRB v. Kobritz*, 193 F. 2d 8, 15 (1st Cir. 1951).

information. *See e.g., Consumers Power Co. v. NLRB*, 113 F. 2d 38, 41-42 (6th Cir. 1940).

Section 1601.12(b) is consistent both with the *Union Starch* treatment of the NLRB's verification requirement and with the generally permissive practice under the NLRA regarding amendments to unfair labor practice charges.

B. Section 1601.12(b) Properly Assures that the Charge Filing Process Will Be Reasonably Accessible to Discrimination Victims

For almost three decades this Court has construed the Title VII charge-filing provisions to avoid the needless creation of technical obstacles that would encumber attempts by discrimination victims to obtain redress from the EEOC or the courts. The Court has enforced those specific limitations which are expressly spelled out in the statute, but has refused to add procedural barriers not "compelled by the plain meaning of the statutory language." *Mohasco Corp. v. Silver*, 447 U.S. 807, 816 n. 19 (1980). The construction of § 706 embodied in § 1601.12(b) is consistent with this longstanding principle of interpretation.

In *Love v. Pullman Co.*, 404 U.S. 522 (1972), the plaintiff sent a letter to the EEOC without first commencing proceedings with the relevant state fair employment agency as required by what is now § 706(c). Rather than rejecting the letter, the EEOC held it in "suspended animation," referred the matter to that state agency, and then formally filed the letter once the state had waived the opportunity to consider the matter. Since the Commission was willing and able to solve in this manner the problem created by Love's failure to utilize his state remedies, this Court could see

> no reason why further action by the aggrieved party should be required. . . . The [employer] makes no showing of prejudice to its interests. To require a second "filing" by the aggrieved party after termination of state proceedings would serve no purpose other than the creation of an additional procedural technicality. Such technicalities are particularly inappropriate in a statutory scheme in

> which laymen, unassisted by trained lawyers, initiate the process.

404 U.S. at 526-27 (footnote omitted).

In *Mohasco Corp. v. Silver*, 447 U.S. 807 (1980), this Court construed § 706(e), which establishes two different charge filing deadlines: 300 days in a deferral state, and 180 days in a non-deferral state. Several circuits had held that a plaintiff could not take advantage of the 300 day period unless he or she had within 180 days of the asserted violation filed a charge with the state fair employment practices agency. *See* 447 U.S. at 814 n. 16. In rejecting that interpretation, this Court stressed that there was no

> *express* requirement that the state proceedings be initiated by any specific date . . . . [W]e do not believe that a court should read in a time limitation that Congress has not seen fit to include, . . . at least when dealing with 'a statutory scheme in which laymen, unassisted by trained lawyers, initiate the process.'

Love v. Pullman Co. 447 U.S. at 816 n. 19 (emphasis added).

In *EEOC v. Commercial Office Products*, 486 U.S. 107 (1988), the complainant had initiated administrative proceedings with the wrong agency at the wrong time; although she was in a deferral state, the complainant filed her charge with EEOC, and had done so some 290 days after the alleged violation and 110 days after the deadline for filing with the state agency. Responding as it had in *Love*, the Commission quickly referred the matter to the state, obtained a waiver of state processing, and then filed the charge. In concluding that the EEOC had jurisdiction over the charge, the Court held that under § 706(c) a discrimination charge could be filed with a state agency even where the state's own charge filing period had expired. Because there was no "express" prohibition against the solution that had been fashioned by the EEOC, the Court "declined to create" a requirement that the state filing be timely under state law, stressing that "Title VII . . . is a remedial scheme in which laypersons, rather than lawyers, are expected to initiate the process." 486 U.S. at 124. Justice O'Connor, although finding Title VII more ambiguous than the

plurality, agreed that "deference is particularly appropriate on this type of technical issue of agency procedure." 486 U.S. at 125. *See Oscar Mayer & Co. v. Evans*, 441 U.S. 750, 755 n. 13 (1979)(refusing to create an "additional procedural technicality" under the ADEA); *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 395 n. 11 (1982).

The statutory language of Title VII creates no express requirement that a charge be verified prior to the end of the charge filing period. Thus § 1601.12(b), insofar as it permits post-filing verification, is entirely consistent with *Love*, *Mohasco*, and *Commercial Office Products*. Requiring complainants, on pain of dismissal, to verify charges prior to the end of the filing period would create precisely the type of additional procedural technicality this Court has consistently avoided in the absence of an express and unambiguous statutory command.

Section 1601.12(b) addresses a recurring and important practical problem in the Title VII administrative process. Although § 706(b) requires that a charge be made under oath or affirmation, most charging parties will not know of or anticipate that procedural requirement when they initially complain to the EEOC. Aggrieved individuals frequently make their first contact with the Commission by letter. *E.g.*, *Mohasco Corp. v. Silver*, 447 U.S. 807, 810 (1980); *Love v. Pullman Co.*, 404 U.S. 522, 523 (1972).[14] Because of the relatively short charge filing periods, a substantial number of these letters arrive towards the end of the period, and it will often be difficult or impossible for the EEOC in the days that may remain to elicit a verified charge from the complainant. These problems were particularly severe when Title VII was first adopted; the regular charge filing period was then only 90 days, there were far fewer deferral states in which the then 210

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[14] For other examples of such letters, *see Whiting v. Ski's Auto World Paint and Body Shop, Inc.*, 1999 WL 753997 (4th Cir.); *Tinsley v. First Union National Bank*, 155 F. 3d 435, 438 (4th Cir. 1998); *Simpkins v. Washington Metropolitan Area Transit Authority*, 1997 WL 702349 *3 (D.C. Cir.); *Tillman v. City of Boaz*, 548 F. 2d 592, 593 (5th Cir. 1977); *Blue Bell Boots, Inc. v. EEOC*, 418 F. 2d 355, 356 (6th Cir. 1969); *Georgia Power Co. v. EEOC*, 412 F. 2d 462, 266 (5th Cir. 1969).

day rule applied, and Title VII did not provide for any EEOC offices outside of Washington, D.C.

Even where it might be practicable for the Commission to hurriedly obtain a verification prior to the end of the charge period, a precipitous effort to do so would often be at odds with other provisions of Title VII. The underlying purpose of the verification requirement is to assure the accuracy of the charge by impressing on the charging party the importance of telling the truth. But that accuracy purpose would itself be compromised if the Commission were compelled in the waning days of a charge filing period to seek immediate verification of whatever a complainant had initially put in a letter. Laymen, however intensely they may believe themselves wronged, often will not understand which kinds of conduct are unlawful or relevant, or know how to categorize or characterize the types of discriminatory actions that may fall within the scope of Title VII's prohibitions.

Section 706(b) requires not only verification but also inclusion of such information as the Commission may require; where, as will frequently occur, a letter to the Commission does not contain all that information, further correspondence or phone calls will be needed to elicit the additional details. In such cases, precipitous solicitation by the EEOC of immediate verification would likely result in a charge that contains the verification, but lacks the completeness, required by § 706(b).[15]

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[15] A similar problem arises where individuals first contact the EEOC by telephone rather than by letter. The Commission staff will usually discuss the matter with the caller to ascertain if the complaint falls within the EEOC's jurisdiction. If the EEOC is the appropriate federal agency to handle the problem, the staff will next send the caller an intake sheet or questionnaire to be filled out in his or her own words. Once that has been returned, the staff may well call or meet with the individual to obtain additional information or clarification. When this process is complete, the staff will prepare a Form 5 charge for signature and verification by the complainant. This longstanding administrative process strikes a reasonable balance between the twin § 706(b) goals of completeness and verification.

As then Judge, later Solicitor General, McCree explained in *Blue Bell Boots, Inc. v. EEOC*, 418 F. 2d 355, 357 (6th Cir. 1969),

> the Congressional intent in requiring an oath is to prevent the harassment of respondents by reckless charges. . . . [T]his purpose can be served by requiring verification before action is taken by the Commission . . . . Such a construction recognizes the remedial nature of the statute and does not prejudice an unwary victim of discrimination by insisting upon a formal requirement which can be supplied before the respondent is brought into the picture.

There is no reason to believe that Congress, in framing the Title VII charge filing process, intended to depart from the informality that is the hallmark of federal administrative law. "The most important characteristic of pleadings in the administrative process is their unimportance. And experience shows that unimportance of pleadings is a virtue." 1 Davis, Administrative Law Treatise § 8.04, at 523 (1958). "It is difficult to imagine how the absence of an oath at the time the original charges was filed could . . . injur[e] [an employer.]" *Choate v. Caterpillar Tractor Co.*, 402 F. 2d. 357, 360 (7th Cir. 1968).

C. The Charge Filing Requirements of Title VII Should Not be Construed to Impose Procedural Requirements More Stringent Than Would be Applied by Courts to Parties in Civil Litigation

This Court's repeated insistence that the Title VII charge filing process be construed in a manner appropriate for laymen is consistent with the pre-Title VII decisions stressing that a charge under the National Labor Relations Act should not be subjected to the more stringent standards that would be appropriate for a civil complaint or other formal pleading. The Fourth Circuit's interpretation of § 706, however, has precisely the opposite consequence–it establishes for Title VII complainants a procedural barrier that assuredly would not be faced by a party in civil litigation.

The litigation practice most analogous to § 706(b) is the requirement in many jurisdictions that a complaint or other pleading be verified. For over a century, litigants who had initially filed unverified pleadings have been permitted to verify them at a later time. Such subsequent verifications have been routinely allowed by federal and state courts for complaints,[16]

[16] *RCL Northwest, Inc. v. Colorado Resources, Inc.*, 72 Wash. App. 265, 271, 864 P. 2d 12, 16 (1993)(lack of verification a "technical defect"); *United States v. $84,740 U.S. Currency*, 900 F. 2d 1402, 1405-06 (9th Cir. 1990)("complaint without verification may be amended to cure the defect"); *Pulliam v. Pulliam*, 163 Kan. 497, 500, 183 P. 2d 220, 227 (1947)(complaint "may be amended by a proper verification and . . . when the amendment is filed it will relate back to the original"); *Workman v. Workman*, 46 N.E. 718, 724, 113 Ind. App. 245 (1943); *Greene v. Union Pac. Stages, Inc.*, 182 Wash. 143, 145, 45 P. 2d 611, 612 (1945); see *United Farm Workers of America, AFL-CIO v. Agricultural Labor Relations Bd.*, 37 Cal. 2d 912, 694 P. 2d 138, 140, 210 Cal. Rptr. 453, 454-55 (1985)("the failure to verify a pleading–even where the verification is required by statute–is a mere defect curable by amendment. . . . Amendments may cure such a defect even when submitted after the statute of limitations has run on the time to file the original compliant, since verification of a complaint is not a jurisdictional requirement.")

petitions,[17] answers,[18] motions,[19] appeal notices,[20] and other documents.[21]

[17] *Miller v. Board of Assessors*, 91 N.Y. 2d 82, 86, 689 N.E. 2d 906, 908, 666 N.Y.S. 2d 1012 (1997); *Thomas v. Thomas*, 910 S.W. 2d 825, 827 (Mo. App. 1995)("verified amended pleadings may relate back to the original petition, thus conferring jurisdiction on the court"); *Oceana Apts. v. Spielman*, 164 Misc. 2d 98, 102, 623 N.Y.S. 2d 724, 727 (Civ. Ct. 1995)("unless a verification defect has been shown to be substantially prejudicial, petitions are amendable"); *Crystal Media, Inc. v. HCI Acquisition Corp.*, 773 S.W. 2d 732, 734 (Tex. Ct. App. 1989); *Stoltman v. Stoltman*, 170 Mich. App. 653, 657, 429 N.W. 2d 220, 222 (1988)("Imperfect verification of a pleading is not a jurisdictional defect and may be cured by amendment"); *Drury Displays, Inc. v. Board of Adjustment of the City of St. Louis*, 760 S.W. 2d 112, 113 (Mo. 1988)("verification can be supplied by amendment and relate[s] back to the time the petition was filed"); *Standard of Beaverdale, Inc. v. Hemphill*, 746 S.W. 2d 662, 664 (Mo. App. 1988)("The verification requirement is not so strict as to make the initial, unverified petition unsalvageable, and the verification relates back to the filing of the original petition"); *Estate of Shaffer v. Holland*, 203 Kan. 264, 270, 454 P. 2d 1, 6 (1969)(subsequent verification "dates back to the time of the original petition"); *Estate of Sessions v. First National Bank of Portland*, 217 Or. 340, 349, 341 P. 2d 512, 517 (1959)("An imperfect verification being only irregular and subject to being cured by amendment, the amendment relates back to the original verification"); *Lewis v. Connett*, 291 F. Supp. 583, 585 (W.D.Ark. 1968)(unverified habeas petition).

[18] *Bell v. State*, 234 Ga. App. 693, 695, 507 S.E. 2d 535, 538 (1998); *Wall v. Greene*, 321 Ill. App. 161, 52 N.E. 2d 303 (1943); *Bank of Dover v. Jones*, 95 S.W. 2d 92, 93 (Ark. 1936); *Kempner v. McMahan*, 296 P. 802, 802 (N.Mex. 1931); *Rex Red Ash Coal Co. v. Powers*, 290 S.W. 2d 1061, 1063 (Ky. App. 1927); *Baker v. Smith*, 135 Ga. 628, 70 S.E. 239 (1911); *Bank of Edgefield v. Farmers' Co-operative Mf'g Co.*, 52 F. 98, 101 (5th Cir. 1892).

[19] *Board of Com'rs of Cheyenne County v. Walter*, 83 Kan. 743, 112 P. 599, 600 (1911)(subsequent verification "related back to the original").

[20] *Drury Displays, Inc. v. Board of Adjustment of the City of St. Louis*, 760 S.W. 2d 112 (Mo. 1988); *United Farm Workers of America, AFL-CIO v. Agricultural Labor Relations Bd.*, 37 Cal. 3d 912, 694 P. 2d 138, 210 Cal. Rptr. 453 (1985).

[21] *Industrial State Bank of Houston v. Engineering Service and Equipment, Inc.*, 612 S.W. 2d 661, 663 (Tex. App. 1981)(plea of privilege); *State ex rel. Williams v. Jones*, 164 S.W. 2d 823, 179 Tenn. 206 (1942)(campaign expense reports); *Kuykendall v. Lambert*, 173 P. 657, 68 Okl. 258 (1918)(plaintiff's reply pleading); *Swearingen v. Howser*, 14 P. 436, 37 Kan. 126 (1887)(affidavit supporting attachment).

> Even if the statute requires verification, the filing of an unverified complaint will commence the action so as to toll the statute of limitations. Despite the requirement of verification, the law is definite and well settled that . . . [i]mperfect verification of a pleading is not a jurisdictional defect and is amendable under Rule 15 [of the Federal Rules of Civil Procedure].

1A Barron and Holtzoff, Federal Practice and Procedure, § 333, pp. 271 (1960). In federal bankruptcy proceedings, where verification is often mandated by Bankruptcy Rule 1008, parties have long been permitted to correct by amendment a missing or defective verification.[22]

Like the filing of a charge under § 706(e)(1), the filing of a complaint is the event which must occur prior to the expiration of a statute of limitations. "A civil action is commenced by filing a complaint with the court." Fed. R. Civ. P. 3. Although the Federal Rules do not generally require verification,[23] they do–like § 706(b)–establish a number of requirements for complaints. A complaint, for example, "shall contain" a statement of the basis of federal jurisdiction, a "short and plain" statement of the claim, and a demand for the relief sought. Fed. R. Civ. P. 8(a). Averments of fraud or mistake "shall be stated with particularity." Fed. R. Civ. P. 9(b). Every complaint "shall contain a caption" setting forth certain information, and "all averments of claim . . . shall be made in numbered paragraphs." Fed. R. Civ. P. 10. And a complaint "shall be signed" and "shall state the signer's address and telephone number." Fed. R. Civ. P. 11.

It has never been suggested that Rules 8, 9, 10 and 11 *define* what constitutes a complaint within the meaning of Fed. R. Civ. P. 3. No one would seriously argue that the filing of

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[22] *E.g., In re Royal Circle of Friends Bldg. Corp.*, 159 F. 2d 539, 541 (7th Cir. 1947); *Harris v. Mills Novelty Co.*, 106 F. 2d 976, 978 (10th Cir. 1939); *Kattleman v. Madden*, 88 F. 2d 858, 865 (8th Cir. 1937); *Sabin v. Blake-McFall Co.*, 223 F. 501, 506 (9th Cir. 1915); *In re Miller*, 192 F. 730 (W.D.Iowa 1912); *In re Meuer*, 144 F. 445 (E.D.Pa. 1906).

[23] *But see* Fed. R. Civ. P., 23.1; Suppl. Rules for Certain Admiralty and Maritime Claims, Rule C(2).

an otherwise sufficient complaint within the applicable limitations period would not constitute the "filing [of] a complaint" under Rule 3 if the complaint lacked numbered paragraphs or omitted the phone number of the signing party or attorney. For decades since the original promulgation of the Federal Rules of Civil Procedure, plaintiffs have routinely and properly been permitted–despite the expiration of the applicable limitations period–to correct, by amendment or otherwise, complaints which failed in some respect to comply with those Rules.

The Rule 11 signature requirement is the provision most analogous to the § 706(b) verification requirement. The filing of even an unsigned complaint is sufficient to meet the statute of limitations. An unsigned complaint will be stricken only if it is not "corrected promptly after being called to the attention of the attorney or party." Fed. R. Civ. P. 11(a). Section 1601.12(b) treats an unverified charge in a manner similar to the treatment of an unsigned complaint under Rule 11. Under Rule 11, a highly experienced and well-paid attorney at one of the nation's most prestigious law firms, despite personal knowledge of the signature requirement, is permitted to correct after the fact his or her error in failing to sign a complaint; it is impossible to understand why complainants should not be permitted to make an analogous correction under § 706.

This Court's decision in *Becker v. Montgomery*, 121 S.Ct. 1801 (2001), confirms the reasonableness of § 1601.12(b). The appellant in that case had failed to sign the notice of appeal which he had timely filed in the district court. Fed. R. App. P. 1(a)(2) provides that such a filing "must" comply with district court practice, and Fed. R. Civ. P. 11 in turn states that any papers "shall" be signed. Even an unsigned notice of appeal, this Court held, was sufficient to satisfy the requirement that a notice of appeal be filed within 30 days of the judgment appealed from. The lack of signature did not mean that what Becker had filed was not a notice of appeal at all, but only that there was a "defect in [the] notice." 121 S.Ct. at 1806. If, as this Court held in *Becker*, such defects are "curable" when they occur in notices filed in a United States District Court, 121 S. Ct. at 1806-07, they are surely curable when they occur in charges filed with the EEOC.

Under the Federal Rules of Civil Procedure there are only two sorts of amendments to a complaint that cannot relate back to the original filing date. First, relation back is not permitted where the amendment names a new defendant, except where the original designation of the defendant was a mistake of which the proper defendant was aware. Fed. R. Civ. P. 15(c)(3). Second, a plaintiff cannot after the expiration of the limitations period raise a new claim that did not "ar[i]se out of the conduct, transaction, or occurrence set forth . . . in the original pleading." Fed. R. Civ. P. 15(c)(2). But where, for example, a timely complaint seeks redress for a particular injury, the complaint can after the limitations period has run be amended to allege a different factual theory as to why the defendant was culpable. *Tiller v. Atlantic Coast Line R. Co.*, 323 U.S. 574, 581 (1945). These are precisely the types of distinctions made by the EEOC regulations, which deem a charge "sufficient" if (but only if) it is "sufficiently precise to identify the parties and to describe generally the action or practices complained of." 29 C.F.R. § 1601.12(b).

Similarly, in this Court a certiorari petition actually filed within the requisite 90 days after entry of the judgment appealed from is sufficient to meet that jurisdictional deadline even if the petition is defective in form or content under Supreme Court Rules 14, 33 or 34. These Rules establish requirements for, but like § 706(b) do not define, a certiorari petition. A petition inadvertently printed with a red cover, or without a table of contents, is still a certiorari petition. Where a timely petition does not conform with the Supreme Court Rules, the petitioner will ordinarily be advised by letter of the deficiency, and be accorded an additional 60 days to submit a corrected petition. Sup Ct. R. 14(5).

Rule 15 of the Federal Rules of Civil Procedure provides that leave to amend "shall be freely given when justice so requires." In construing Rule 15 in the year before the enactment of Title VII, this Court observed, "It is too late in the day and entirely contrary to the spirit of the Federal Rules of Civil Procedure for decisions on the merits to be avoided on the basis of . . . mere technicalities." *Foman v. Davis*, 371 U.S. 178, 181 (1963). Congress assuredly intended that Title VII be administered in a similar spirit.

CONCLUSION

For the above reasons, the decision of the Court of Appeals for the Fourth Circuit should be reversed.

Respectfully submitted,

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